

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL CASE NO. 1:07-cv-335

STEPHEN W. WALKER,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

ORDER

THIS MATTER is before the Court on the Plaintiff's Motion for Attorneys' Fees Under 42 USC 406(b). [Doc. 27].

Plaintiff's motion asks the Court to approve fees based on a fee agreement and a back benefits award in which fees were withheld. Those are not appended to Plaintiff's motion. To dispose of Plaintiff's motion, the Court must evaluate the reasonableness of an award under such agreement. Gisbrecht v. Barnhart, 535 U.S. 789, 122 S.Ct. 1817 (2002). Also absent is a recitation of Plaintiff's counsel's hours spent pursuing this lawsuit, which aid in the reasonableness evaluation set out in Gisbrecht.

Plaintiff's motion is unclear in whether Plaintiff seeks an award of the full withheld 25% of back benefits, from which the Court would then order Plaintiff's counsel to reimburse to Plaintiff the sum representing the earlier-paid EAJA fees, or whether Plaintiff seeks an award of \$14,409.00, from which the Court would then order Plaintiff's counsel to reimburse to Plaintiff the sum representing the earlier-paid EAJA fees. The Court will not enter an order under 42 USC 406(b) that does not include an order that counsel reimburse Plaintiff for EAJA fees counsel actually received. Id.

Plaintiff's motion also fails to indicate what, if any, fees may have been awarded under 42 USC 406(a), and is not completely clear whether counsel was paid as attorney fees the full \$3950.00 previously awarded to Plaintiff by this Court under the EAJA. Brown v. Barnhart, 270 F.Supp.2d 769, 771 (W.D. Va, 2003) citing Morris v. Social Security Administration, 689 F.2d 495, 497 (4th Cir.1982), Stephens ex rel. R.E. v. Astrue, 565 F.3d 131(4th Cir. 2009).

The Court finally notes that Defendant is permitted to respond to Plaintiff's motion on or before May 24, 2010.

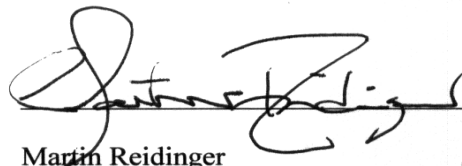
IT IS THEREFORE ORDERED that the Plaintiff supplement his Motion for Attorney's Fees [Doc. 27] with short clarifying statements about the fees requested under 406(b), any fees received or pending pursuant to

406(a), and payment to counsel of the fees ordered under EAJA, and append thereto, both the fee agreement under which he proceeds and the award from which 25% is withheld to pay the fees he seeks, as well as a time statement.

IT IS FURTHER ORDERED that, to permit Defendant a full set of facts upon which to respond, Plaintiff submit these materials within 7 calendar days of the entry of this Order.

IT IS SO ORDERED.

Signed: May 11, 2010


Martin Reidinger
United States District Judge

